

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Sep-18-2018 10:58 am

Case Number: CPF-18-516346

Filing Date: Sep-18-2018 10:57

Filed by: ROSSALY DELAVEGA

Image: 06499858

DECLARATION OF

IN RE: DEAN R GRAFILO

001C06499858

Instructions:

Please place this sheet on top of the document to be scanned.

1 XAVIER BECERRA
2 Attorney General of California
3 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
6 Telephone: (415) 510-3488
Fax: (415) 703-5480
E-mail: Larry.mercer@doj.ca.gov
7 Attorneys for Petitioner and Real
Party in Interest

FILED
San Francisco County Superior Court
SEP 10 2018
CLERK OF THE COURT
BY: *[Signature]* *[Signature]*
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9

10 COUNTY OF SAN FRANCISCO
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13 DEAN R. GRAFILO, DIRECTOR OF THE
14 DEPARTMENT OF CONSUMER
AFFAIRS, STATE OF CALIFORNIA,

15 Petitioner,

16 v.

17 KAISER PERMANENTE/TPMG;
18 MAMMOTH UNIFIED SCHOOL
DISTRICT,

19 Respondent.
20

21 MEDICAL BOARD OF CALIFORNIA,
22

23 Real Party in Interest.
24

Case No. **CPF-18-516346**

DECLARATION OF SUPERVISING
SPECIAL INVESTIGATOR RASHYA
HENDERSON

Date:
Time:
Dept:
Judge:
Trial Date:
Action Filed:

25 I, RASHYA HENDERSON, declare that the following matters are true and correct:

26 1. I am employed by the Medical Board of California (Board) as a Supervising Special
Investigator in the Complaint Investigation Office, which investigates complaints received by the

1 Board and obtains the evidence necessary to determine whether physicians are violating the
2 Medical Practice Act and related laws relating to the practice of medicine.

3 2. In 2017, the Board began receiving complaints that school-aged children were
4 obtaining vaccination exemptions based upon medical conditions that did not appear to be valid.
5

6 3. On June 26, 2017, the Board received an email complaint from the Assistant Chief of
7 Pediatrics at Kaiser, Roseville, reporting that a Kaiser patient was given an inappropriate vaccine
8 exemption letter by Dr. Kenneth Stoller. On February 5, 2018, I contacted the Kaiser physician
9 and requested a copy of the vaccination exemption letter referred to in the complaint. In response,
10 I was provided with a copy of the letter, with the patient's name redacted. On February 12, 2018,
11 I served an investigative subpoena on Kaiser Permanente/TPMG (Kaiser), requesting an
12 unredacted copy of the exemption letter, as well as the identities of any other children with
13 vaccine exemptions from Dr. Stoller on file with Kaiser Roseville. On March 1, 2018, Kaiser
14 legal counsel refused to provide the requested letter without a parental medical release.
15

16 4. On September 21, 2017, the Board received an online complaint from the Mammoth
17 Unified School District (School District), reporting that Dr. Stoller had written vaccine exemption
18 letters for several students. The complaint stated: "This physician is not a local Pediatrician and
19 our local Pediatrician group deemed that these children did not qualify for an exemption." On
20 November 9, 2017, the school district provided seven exemption letters, with the names of the
21 children redacted. On January 11, 2018, I served an investigational subpoena on the school
22 district for unredacted copies of the exemption letters, as well as the identities of any other
23 children with exemption letters from Dr. Stoller. On February 5, 2018, an attorney for "multiple
24 families" presented objections to the production of the records. By letter dated February 6, 2018,
25 the school district declined to produce the requested records.
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5. In follow up contacts with the school district, I have been informed that the students' exemptions have been renewed, but that the school district will not provide those records as the exemptions include a statement that disclosure by the school district will be met with legal action.

6. On October 29, 2017, the Board received an online complaint from the noncustodial parent of a child who had been provided with a vaccination exemption letter from Dr. Stoller. On November 8, 2017, the Board obtained a copy of the exemption letter and an Adverse Event Risk Assessment Report prepared by Dr. Stoller. On February 9, 2018, a request for a medical release was sent to the child's custodial parent and she was asked to authorize the release of Dr. Stoller's records to the Board. On February 22, 2018, I received a letter from the attorney for the custodial parent stating that the parent would not release the records and also instructing the Windsor School District not to produce any records for the child in its possession.

7. On August 31, 2018, a set of interrogatories was served upon Dr. Stoller pursuant to Government Code §11182. The interrogatories sought the names and addresses of Kaiser and School District children to whom Dr. Stoller had issued vaccination exemptions. On September 13, 2018, filed objections and refused to provide the requested information.

8. Attached to this declaration are true copies of the following documents, which have been redacted to protect any personal identifying information relating to the individuals:

- A. Exemption letters for nine patients;
 - B. Investigative subpoenas for records of Mammoth Unified School District and Kaiser Permanente/TPMG;
 - C. Responses to subpoenas.

Executed under penalty of perjury at Sacramento, California on September 17, 2018.

RASHYA HENDERSON

Exhibit A

Exemption Letters

K Paul Stoller, MD, FACHM Chief of Hyperbaric Medicine

Hyperbaric Oxygen Center San Francisco, 1345 Broadway at 3rd Street, San Francisco, CA 94107
Neurology Group - 1545 Broadway 1A San Francisco, CA 94107
415 563 3800

6/14/17

To Whom It May Concern,

[REDACTED]. Following detailed risk assessment, vaccination is not considered safe due to [REDACTED]'s specific genetics. Given these issues, I certify that all vaccines otherwise required for admission to school, (including but not limited to the MMR, Polio, Dtap, HepB and Varicella) in California is not considered safe and this is permanent. I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

I have detailed this in an Adverse Risk Assessment Report that is in the possession of the above student's parents.

Very truly yours

KP Stoller, MD, FACHM

Name: [REDACTED]
MRN: [REDACTED] DOB: [REDACTED]
Dept: ROS-PEDC >SIERRA GARD
Prov: DOAN THAO XUAN, M.D.,
Appt Date: 6/19/2017 Prov ID 67811
[REDACTED]

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record. Family Educational Rights and Privacy Act (FERPA) - Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB 277 and the law based on same. A letter confirming this is available upon request.

I, M. R., parent of the above-named student hereby refuse to allow any one or agency to have access to this exemption under penalty of law. I do not consent to allow this exemption to be shared under any circumstance.



K Paul Stoller, MD, FACHM Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Azzolina
Neurology Group - 1545 Broadway 1A, San Francisco, CA 94109
415 563-3800

4/29/16

To Whom It May Concern,

[REDACTED] has genetic issues that make receiving vaccines inappropriate. Given these issues, I believe she is at high risk of adverse events to vaccination so vaccinations are not considered safe for this child. I have detailed this in an Adverse Risk Assessment Report that is in the possession of the above student's parents.

This medical exemption to all vaccines is permanent.

Very truly yours

KP Stoller, MD, FACHM

CONFIDENTIALITY NOTICE TO THE SCHOOL

Family Educational Rights and Privacy Act (FERPA) - Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies. A student's health records, including immunization information and other records maintained by a school nurse, are considered part of the student's education record and are protected from disclosure under FERPA to anyone or entity outside the school without parental consent including this report unless PII of the child has been redacted.

K. Paul Stoller, MD, FACHM - Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Azzolina Neurology Group - 1545 Broadway 1A, San Francisco, CA 94109
415-563-3800

9/20/17

To Whom It May Concern:

[REDACTED] Following risk analysis, vaccination is not considered safe for [REDACTED] while he undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school (including but not limited to the MMR, Polio, Tdap, Dtap, HepB, Hib and Varicella) in California is not considered safe and this is for a period of 90 days while he is being assessed. Start date 9/20/17 and expires 1/20/17.

I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

KP Stoller, MD, FACHM Calic A41183

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record - Family Educational Rights and Privacy Act (FERPA). Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB 277 and the law based on same. A letter confirming this is available upon request.

ST 11300100

[REDACTED]

RECORDED AND INDEXED IN THE RECORDS OF THE FBI, WASHINGTON, D.C.
BY [REDACTED] AND [REDACTED] ON APRIL 10, 1968
[REDACTED]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10-10-2018 BY SP/PC 102-0100

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 10-10-2018 BY SP/PC 102-0100

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 10-10-2018 BY SP/PC 102-0100

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 10-10-2018 BY SP/PC 102-0100

Karen L. Stoller, MD, FACM - Chief of Hygiene

MEDEVAC

Hyperbaric Oxygen Center of San Francisco, associated with the Azzolina
Neurology Group - 145 Broadway, A, San Francisco, CA 94109

415-561-1000

9/25/17

To Whom It May Concern:

[REDACTED] following risk analysis, vaccination is not considered safe for [REDACTED] while she undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school (including but not limited to the MMR, Polio, Tdap, Dtap, DTaP, Hib and Varicella) in California is still considered safe and this is for a period of 90 days while she is being assessed. Start date 9/25/17 and expire 12/25/17.

I understand that for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

Karen L. Stoller, MD, FACM CCR - 441-#3

CONFIDENTIALITY NOTICE TO PARENT

This document is a private and confidential record of the patient/client named above. This document is protected from disclosure by applicable laws, including but not limited to their health insurance portability and accountability act (HIPAA), and the Family Educational Rights and Privacy Act (FERPA). In accordance with law, if a HIPAA-covered family educational rights and privacy act (FERPA)-protected student's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or immunization records, Family Educational Rights and Privacy Act (FERPA) prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the University signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for compliance requirements set forth in SB 277 and the law based on same. A letter concerning this example can be found at [REDACTED]

K Paul Stoller, MD, FACHM, Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Azzolina Neurology Group - 1545 Broadway 1A, San Francisco, CA 94109
415 563-3800

9/20/17

To Whom It May Concern,

[REDACTED] Following risk analysis, vaccination is not considered safe for [REDACTED] while she undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school, (including but not limited to the MMR, Polio, Tdap, Dtap, HepB, Hib and Varicella) in California is not considered safe and this is for a period of 90 days while she is being assessed. Start date 9/20/17 and expires 12/20/17.

I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

KP Stoller, MD, FACHM Ca # A41783

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record. Family Educational Rights and Privacy Act (FERPA) - Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB-277 and the law based on same. A letter confirming this is available upon request.

K Paul Stoller, MD, FACHM - Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Axonim Neurology Group - 1545 Broadway 1A, San Francisco, CA 94109
415.561.2800

9/14/17

To Whom It May Concern,

[REDACTED] Following risk analysis, vaccination is not considered safe for [REDACTED] while she undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school (including but not limited to the MMR, Polio, Tdap, Dtap, HepB, Hib and Varicella) in California is not considered safe and this is for a period of 90 days while she is being assessed. Start date 9/14/17 and expires 12/14/17.

I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

KP Stoller, MD, FACHM

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further pursuant to Cal. Health & Safety Code section 120410 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record. Family Educational Rights and Privacy Act (FERPA) - Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB 277 and the law based on same. A letter confirming this is available upon request.

K Paul Stoller, MD, FACHM Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Azzolina Neurology Group— 1545 Broadway 1A, San Francisco, CA 94109
415-563-3800

9/14/17

To Whom It May Concern,

[REDACTED] Following risk analysis, vaccination is not considered safe for [REDACTED] while she undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school, (including but not limited to the MMR, Polio, Tdap, Dtap, HepB, Hib and Varicella) in California is not considered safe and this is for a period of 90 days while she is being assessed. Start date 9/14/17 and expires 12/14/17.

I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

KP Stoller, MD, FACHM

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record. Family Educational Rights and Privacy Act (FERPA) - Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB 277 and the law based on same. A letter confirming this is available upon request.

K. Paul Stoller, MD, FACHM - Chief of Hyperbaric Medicine

Hyperbaric Oxygen Clinic of San Francisco in association with the Arzolino Neurology Group - 1545 Broadway 1A, San Francisco, CA 94109
415-563-3800

8/3/17

To Whom It May Concern:

[REDACTED] Following risk analysis, vaccination is not considered safe for [REDACTED] while she undergoes an Adverse Event Risk Assessment. I certify that all vaccines otherwise required for admission to school (including but not limited to the MMR, Polio, Dtap, HepB, Hib and Varicella) in California is not considered safe and this is for a period of 90 days while she is being assessed. Start date 8/3/17 and expires 11/3/17.

I understand that for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed.

Very truly yours,

KP Stoller, MD, FACHM

CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption records (Family Educational Rights and Privacy Act (FERPA)). Prevents the disclosure of personally identifiable information (PII) in a student's education record without the consent of a parent or eligible student (aged 18 or older) unless an exception to the law's general consent requirement applies (the Governor signs a medical emergency order).

The content of this medical exemption has been reviewed by legal counsel for meeting the requirements set forth by SB 277 and the law based on same. A letter confirming this is available upon request.

Exhibit B

Subpoenas Duces Tecum

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BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Investigation of)
Kenneth Paul Stoller, M.D.) INVESTIGATIONAL SUBPOENA
Case Number 800-2017-034218) DUCES TECUM TO PRODUCE
To: Kaiser Permanente) PAPERS AND DOCUMENTS
TPMG Legal & Government Affairs)
1950 Franklin Street, 17th Floor)
Oakland, California 94612)
Attn: Zennie Coughlin)

Pursuant to the powers conferred upon the Director of the Department of Consumer Affairs (DCA) of the State of California as head of the DCA by Sections 11180 through 11191 of the Government Code of California, which powers have been delegated by the said Director under Section 7 of the Government Code to Staff Services Manager II, Paulette Romero of the Medical Board of California, a health oversight agency.

YOU ARE HEREBY COMMANDED to appear before Supervising Special Investigator (SSI) Rashya Henderson and/or any other duly authorized representative(s) of the Medical Board of California Enforcement Program staff, at 1855 Gateway Boulevard, Suite 320, Concord, California 94520, on the 5th day of March, 2018, at the hour of 1:00 p.m., then and there to testify and to answer questions propounded to you in connection with the above titled investigation and to bring with you, and there produce, any and all writings as defined by Evidence Code Section 250, including but not limited to, all the papers, books, accounts, documents and records described in the attached list, regardless of the form in which they are kept, and including all electronic or computer forms of records.

1 For purposes of this subpoena, all references to records and documentation include, but are not
2 limited to, production of minutes, notes, electronic communications, audio and video recordings,
3 reports, findings, recommendations or evaluations, taken during any formal or informal conferences,
4 discussions or meetings.

5 For failure to comply with the commands of this subpoena, you will be liable to the
6 proceedings and penalties provided by law.

7 **NOTICE:** If you confirm with SSI Henderson that the specific papers and documents
8 commanded in this subpoena duces tecum have been, or will be, delivered or otherwise produced
9 to SSI Henderson at 2005 Evergreen Street, Suite 1200, Sacramento, California 95815, before
10 the time of your appearance, then you DO NOT need to appear. If the records produced are not
11 certified, you must personally appear on the date, time and location indicated on the preceding
12 page.

13 If you have any questions, contact SSI Henderson at (916) 263-2563 or
14 Rashya.Henderson@mbc.ca.gov.

15 Given under my hand this 17th day of, February 2018.

16 PRomero

17 Paulette Romero
18 Staff Services Manager II
19 Department of Consumer Affairs
20 Medical Board of California
21 Enforcement Program
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SUBPOENA FOR AGENCY RECORDS

2 Regarding medical vaccination exemptions written by Kenneth Paul Stoller, M.D. submitted to
3 Kaiser Permanente Roseville Pediatrics. This includes, but is not limited to:

- 4 1. Unredacted copy of medical vaccination exemption letters received by Kaiser Permanente
5 Roseville Pediatrics from Dr. Stoller;
- 6 2. Name and date of birth of all children with medical vaccination exemptions from Dr.
7 Stoller;
- 8 3. Name of parent and/or legal guardian of any and all children with medical vaccination
9 exemption on file with Kaiser Permanente Roseville Pediatrics from Dr. Stoller;
- 10 4. Contact information (to include physical address, telephone number, and, if possible, e-
11 mail address) of parent and/or legal guardian of any and all children with medical
12 vaccination exemption on file with Kaiser Permanente Roseville Pediatrics from Dr.
13 Stoller.

**BEFORE THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the matter of the Investigation of:

Kenneth Paul Stoller, M.D.

Case Number 800-2017-034218

To: Kaiser Permanente

TPMG Legal & Government Affairs

1950 Franklin Street, 17th Floor

Oakland, California 94612

Attn: Zennie Coughlin

**NOTICE AND
ACKNOWLEDGEMENT OF
INVESTIGATIONAL SUBPOENA**

NOTICE

This Investigational Subpoena Duces Tecum is served pursuant to California Government Code §11184 and Code of Civil Procedure §415.30. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a subpoena upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of a subpoena. Section 415.30 provides that this subpoena is deemed served on the date of execution of an acknowledgment of receipt of subpoena.

11/18

Signature of Sender:

Dated:

2/12/18

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt on Feb 20, 2018 of a copy of the investigational subpoena.

Signature

Printed Name

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BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Investigation of:)
Kenneth Paul Stoller, M.D.) INVESTIGATIONAL SUBPOENA
Case Number 800-2017-036951) DUCES TECUM TO PRODUCE
To: Mammoth Unified School District) PAPERS AND DOCUMENTS
PO Box 3509)
Mammoth Lakes, California 93546)
Attn: Lois Klein, Superintendent)

Pursuant to the powers conferred upon the Director of the Department of Consumer Affairs (DCA) of the State of California as head of the DCA by Sections 11180 through 11191 of the Government Code of California, which powers have been delegated by the said Director under Section 7 of the Government Code to Staff Services Manager II, Paulette Romero of the Medical Board of California, a health oversight agency.

YOU ARE HEREBY COMMANDED to appear before Supervising Special Investigator (SSI) Rashya Henderson and/or any other duly authorized representative(s) of the Medical Board of California Enforcement Program staff, at 1735 Technology Drive, Suite 800, San Jose, California 95110, on the 5th day of February, 2018; at the hour of 10:00 a.m., then and there to testify and to answer questions propounded to you in connection with the above titled investigation and to bring with you, and there produce, any and all writings as defined by Evidence Code Section 250, including but not limited to, all the papers, books, accounts, documents and records described in the attached list, regardless of the form in which they are kept, and including all electronic or computer forms of records.

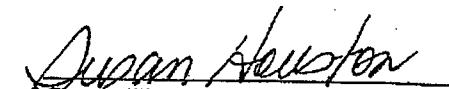
1 For purposes of this subpoena, all references to records and documentation include, but are not
2 limited to, production of minutes, notes, electronic communications, audio and video recordings,
3 reports, findings, recommendations or evaluations, taken during any formal or informal conferences,
4 discussions or meetings.

5 For failure to comply with the commands of this subpoena, you will be liable to the
6 proceedings and penalties provided by law.

7 NOTICE: If you confirm with SSI Henderson that the specific papers and documents
8 commanded in this subpoena duces tecum have been, or will be, delivered or otherwise produced
9 to SSI Henderson at 2005 Evergreen Street, Suite 1200, Sacramento, California 95815, before
10 the time of your appearance, then you DO NOT need to appear. If the records produced are not
11 certified, you must personally appear on the date, time and location indicated on the preceding
12 page.

13 If you have any questions, contact SSI Henderson at (916) 263-2563 or
14 Rashya.Henderson@mbc.ca.gov.

15 Given under my hand this 11th day of January 2018.

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20 Susan Houston
21 Staff Services Manager II
22 Department of Consumer Affairs
23 Medical Board of California
24 Enforcement Program
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SUBPOENA FOR AGENCY RECORDS

Regarding medical vaccination exemptions written by Kenneth Paul Stoller, M.D. for children enrolled at Mammoth Unified School District. This includes, but is not limited to:

1. Unredacted copy of medical vaccination exemption letters received by your school district from Dr. Stoller;
 2. Name and date of birth of all children with medical vaccination exemptions from Dr. Stoller;
 3. Name of parent and/or legal guardian of all child with medical vaccination exemption on file with your school district from Dr. Stoller;
 4. Contact information (to include physical address, telephone number, and, if possible, e-mail address) of parent and/or legal guardian of child with medical vaccination exemption on file with your school district from Dr. Stoller.

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BEFORE THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Investigation of:

Kenneth Paul Stoller, M.D.

Case Number 800-2017-036951

To: Mammoth Unified School District

PO Box 3509

Mammoth Lakes, California 93546

Attn: Lois Klein, Superintendent

}
} NOTICE AND
} ACKNOWLEDGEMENT OF
} INVESTIGATIONAL SUBPOENA

NOTICE

This Investigational Subpoena Duces Tecum is served pursuant to California Government Code §11184 and Code of Civil Procedure §415.30. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a subpoena upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of a subpoena. Section 415.30 provides that this subpoena is deemed served on the date of execution of an acknowledgment of receipt of subpoena.

Signature of Sender: Kenneth P. Stoller Dated: 1/11/18

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt on 1-16, 2018 of a copy of the investigational subpoena.

Lois Klein

Signature

Lois Klein

Printed Name

Exhibit C

Subpoena Responses



The Permanente Medical Group, Inc.

TPMG Legal &

Government Affairs

1800 Harrison Street, Suite 2350
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Tel 510-625-4473 | Fax 510-625-7008

Gary S. Dulberg
Assistant General Counsel
Office: (510) 625-4727

March 1, 2018

THE MEDICAL BOARD OF CALIFORNIA
2005 EVERGREEN STREET, SUITE 1200
SACRAMENTO, CA 95815

RE: Dr. Kenneth Stoller, case # 800-2017-034218

Dear Rashya Henderson:

The Permanente Medical Group (TPMG) is in receipt of the subpoena you forwarded to "Kaiser Permanente" regarding Dr. Kenneth Stoller, case # 800-2017-034218. Please direct all future inquiries regarding this matter to my attention.

While TPMG understands the concern underlying the investigation of Dr. Stoller, TPMG is unable to provide any records in response to the subpoena for two reasons.

First, any possible vaccination exemption letters written by Dr. Stoller are not stored in our data systems in a manner that can be identified without an unduly burdensome search of our records.

Second, even if we could identify such records without an undue burden, we are unable to release such records without the consent of those patients and/or their legal guardians.

Please contact me if you have any questions about his matter.

Sincerely,

Gary S. Dulberg | Assistant General Counsel



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February 6, 2018

Via U.S. Mail and Email (greg@gregglaser.com; rashya.henderson@mbc.ca.gov)

Greg Glaser
Attorney at Law
P.O. Box 423
Copperopolis, California 95228

Rashya Henderson, Special Investigator
California Department of Consumer Affairs
1735 Technology Drive, Suite 800
San Jose, California 95110

Re: Investigational Subpoena Duces Tecum, Mammoth Unified School District; *In the Matter of the Investigation of Kenneth Paul Stoller, M.D.*, Case Number 800-2017-036951

To Whom it May Concern:

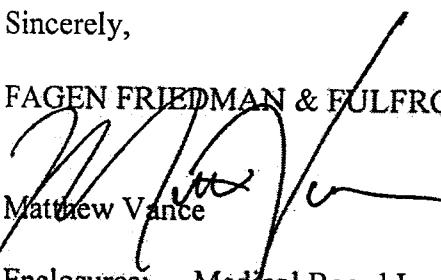
Our office represents the Mammoth Unified School District ("District"). This letter regards the above-referenced Investigational Subpoena Duces Tecum ("Subpoena"), dated January 11, 2018, enclosed herein. This letter follows my February 2 and 5, 2018, phone conversations with Mr. Glaser, and my February 2, 2018, voice message to Ms. Henderson, regarding the Subpoena, and the District's receipt of Mr. Glaser's written objections to the production of students' records in response to the Subpoena.

The District received written objections on behalf of six (6) students and their families. Based on the District's receipt of these written objections to the Subpoena, the District will not produce these students' records at this time. (Code of Civ. Proc. § 1985.3(g).) These students' records are the only responsive records to the Subpoena. The written objections are enclosed for reference.

If the above information does not accurately reflect your office's understanding of the Subpoena and the written objections received by the District in response thereto, please contact our office.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP


Matthew Vance

Enclosures: Medical Board Investigational Subpoena Duces Tecum
Greg Glaser Written Objections

cc: Lois Klein, District Superintendent (via email at lklein@mammothusd.org)
00144-00001/4181737.1

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Greg
Glaser

February 2, 2018

VIA EMAIL ONLY

Lois Klein, Superintendent
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Rashya Henderson, Special Investigator
California Department of Consumer Affairs
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Re: Case No. 800-2017-036951 (Stoller)

Ms. Klein and Ms. Henderson,

This letter will supersede my letter to you dated January 26, 2018.

I have now been contacted by *multiple* families who have received Ms. Klein's letter in relation to the subpoena duces tecum from California Department of Consumer Affairs requesting production of confidential records on February 5, 2018 ("Subpoena"). I now see clearly that the DCA is engaged in an unspecific, highly unlawful fishing expedition. I have not yet obtained discovery of your files, but such illegal investigation appears to have originated with the school's unlawful sharing of confidential student information. Thus, the school and DCA appear to be currently breaking Federal law.

DCA, please confirm that you will withdraw your unlawful subpoena immediately and purge from your files the confidential student information that you received unlawfully in violation of the Federal and State privacy laws detailed in this letter.

For privacy reasons under both Federal law and California law, my clients are hereby objecting to the Subpoena. My clients do **not** consent to any attempt by the State to subpoena the private

and confidential records of their children or their family's contact information. As detailed in this letter, medical and educational records are private and confidential under multiple privacy laws, including but not limited to HIPAA, FERPA, and Cal. Health and Safety Code section 120440.

Moreover, I have strong reason to suspect that your investigation is currently violating both Federal and California law as you are not lawfully in possession of private & confidential student information and records that are driving your investigation for unknown reasons.

The Subpoena is fundamentally flawed in that it does not contain the necessary proof under California law that the patient's parents were provided with notice of the Subpoena and an opportunity to object on the grounds of privacy. See e.g., Cal. Code Civ. Proc. §§ 1985.3 and 1985.6. The Subpoena also does not contain a valid proof of service. I do not agree, nor am I authorized, to accept service of the Subpoena on behalf of my clients.

I am separately notifying the school's counsel (copied on this letter) of the identity of my clients, in confidence pursuant to FERPA, so that the school is on notice of the families asserting their full privacy rights pursuant to this letter.

A. Family Educational Rights and Privacy Act (FERPA)

"At the elementary or secondary school level, students' immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are 'education records' subject to FERPA." U.S. Dept. of Education, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records* (November 2008), p. 6.

And under FERPA, schools may only share medical records of students to meet "legitimate educational interests". See 20 U.S.C. §1232g (b)(1) and 34 C.F.R. § 99.31(a)(1)(i)(A).

The school's conduct here with sharing confidential student information and records does not meet this standard, and it violates FERPA on two levels (1) notice requirements, and (2) substantive requirements.

1. FERPA Notice Requirements

To take advantage of FERPA's "legitimate educational interests" exception, the school must first give annual notice of its criteria for determining what is a "legitimate educational interest." 34 C.F.R. § 99.7(a)(3)(iii).

Here, the school makes no immediate provision for compliance with that annual notice requirement. And even if it did, the school would still violate FERPA's substantive requirements.

Notably, data reporting of Immunization Assessment Reports for purposes of Cal. Health & Safety Code section 120375 and 17 CCR 6075 does not allow a release of **personally identifiable** information in a student's confidential education and health record.

That is why the school's conduct here is an intrusion into student privacy.

2. FERPA Substantive Requirements

Under law, routine vaccine administration is not an "emergency", so the State investigator may not gather personally identifiable health information from student records. See for example U.S. Dept. of Educ. Family Compliance Policy Office, *Letter to Alabama Department of Education re: Disclosure of Immunization Records*, February 25, 2004, available at <http://www2.ed.gov/policy/gen/guid/fpcos/ferpa/library/alhippaa.html>

In this letter, the U.S. Department of Education **rejects** the position of the Alabama Department of Public Health that tried to gain access to student immunization records:

"Dr. Williamson [State Health Officer, Alabama Department of Public Health (DPH)] went on to state that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) applies to students' immunization records and that HIPAA permits schools to disclose these records to the DPH....

"[T]here is no exception to FERPA's prior consent rule that would permit a school subject to FERPA to disclose health or other immunization records to a State health agency such as DPH under the circumstances described in Dr. Williamson's April 22, 2003 memorandum. A very limited exception to FERPA's prior consent rule allows educational agencies and institutions to disclose personally identifiable non-directory information to appropriate officials in connection with a health or safety emergency. Specifically, FERPA provides that education records may be disclosed without consent:

in connection with an emergency [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

"20 U.S.C. § 1232g(b)(1)(I). However, the regulations implementing this provision at 34 C.F.R. §§ 99.31(a)(10) and 99.36 indicate that **these conditions will be "strictly construed."**

"The exception to FERPA's prior written consent requirement was created with the first FERPA amendments that were signed into law on December 13, 1974. The legislative history demonstrates that Congress intended to limit application of the "health or safety" exception to exceptional circumstances, as follows:

Finally, under certain emergency situations it may become necessary for an educational agency or institution to release personal information to protect the health or safety of the student or other students. In the case of the outbreak of an epidemic, it is unrealistic to expect an educational official to seek consent from every parent before a health warning can be issued. **On the other hand, a blanket exception for "health or safety" could lead to unnecessary**

dissemination of personal information. Therefore, in order to assure that there are adequate safeguards on this exception, the amendments provided that the Secretary shall promulgate regulations to implement this subsection. It is expected that he will strictly limit the applicability of this exception.

"Joint Statement in Explanation of Buckley/Pell Amendment, 120 Cong. Rec. S21489, Dec. 13, 1974. (These amendments were made retroactive to November 19, 1974, the date on which FERPA became effective.)

"This Office has consistently interpreted this provision narrowly by limiting its application to a *specific situation* that presents *imminent danger* to students or other members of the community, or that requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. While the exception is not limited to emergencies caused by terrorist attacks, the Department's Guidance on "Recent Amendments to [FERPA] Relating to Anti-Terrorism Activities," issued by this Office on April 12, 2002 provides a useful and relevant summary of our interpretation (emphasis added):

[T]he health or safety exception would apply to nonconsensual disclosures to appropriate persons in the case of a smallpox, anthrax or other bioterrorism attack. This exception also would apply to nonconsensual disclosures to appropriate persons in the case of another terrorist attach such as the September 11 attack. However, any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency. As the legislative history indicates, this exception is temporally limited to the period of the emergency and generally will not allow for a blanket release of personally identifiable information from a student's education records.

Under the health and safety exception, school officials may share relevant information with "appropriate parties," that is, those parties whose knowledge of the information is necessary to provide immediate protection of the health and safety of the student or other individuals. (Citations omitted.) Typically, law enforcement officials, public health officials, and trained medical personnel are the types of parties to whom information may be disclosed under this FERPA exception....

The educational agency or institution has the responsibility to make the initial determination of whether a disclosure is necessary to protect the health or safety of the student or other individuals. ...

"In summary, educational agencies and institutions subject to FERPA may disclose personally identifiable, non-directory information from education records under the "health or safety emergency" exception only if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for

information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question. This exception is temporally limited to the period of the emergency and generally does not allow a blanket release of personally identifiable information from a student's education records to comply with general requirements under State law.” [emphasis added]

Accordingly, this legal opinion letter precedent from the U.S. Department of Education is directly on point to show that third parties cannot access or retain confidential student records.

See also U.S. Dept. of Educ. Family Compliance Policy Office, Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004, available at www.ed.gov/policy/gen/guid/fpcos/ferpa/library/baiseunmslc.html

“We cannot come to the same conclusion with respect to the ‘routine’ or non-emergency reporting that is required by regulation for other notifiable conditions, including the infectious diseases, injuries, environmental exposures, sexually transmitted diseases, HIV/AIDS, cancer, and birth defects specified in 7NMAC 4.3.12 B, as well as reports to the New Mexico Tumor Registry required under 7 NMAC 4.3.10. Indeed, in these cases, the State Department of Health has determined that the specified disease or condition *does not* constitute an imminent danger or threat or that emergency reporting or other action is necessary to address the concern. Consequently, the University may not disclose information from a student’s education records to meet these “routine” health reporting requirements unless it has made a specific, case-by-case determination that a health or safety emergency exists....” [emphasis added]

See also Federal Register, Vol. 73, No. 237, December 9, 2008 (regarding 34 CFR Part 99)

“Health or Safety Emergency (§ 99.36)...

“(a) Disclosure in Non-Emergency Situations

“Comment: Some commenters suggested that we interpret § 99.36 to permit the sharing of information on reportable diseases to health officials in non-emergency situations. These commenters stated that the disclosure of routine immunization data should be subject to State, local, and regional public health laws and regulations and not FERPA. One of these commenters noted that the HIPAA Privacy Rule allows covered entities to disclose personally identifiable health data, without consent, to public health authorities.

“Discussion: There is no authority in FERPA to exclude students’ immunization records from the definition of education records in FERPA. Further, the HIPAA Privacy Rule specifically excludes from coverage health care information that is maintained as an “education record” under FERPA. 45 CFR 160.103, Protected health information. We understand that the HIPAA Privacy Rule allows covered entities to disclose identifiable health data without written consent to public health authorities. However, there is no

statutory exception to the written consent requirement in FERPA to permit this type of disclosure. As explained in the preamble to the NPRM (73 FR 15589), the amendment to the health or safety emergency exception in § 99.36 does not allow disclosures on a routine, non-emergency basis, such as the routine sharing of student information with the local police department. Likewise, this exception does not cover routine, non-emergency disclosures of students' immunization data to public health authorities. Consequently, there is no statutory basis for the Department to revise the regulatory language as requested by the commenters." [emphasis added]

Based on clear precedents like these, there would be no rational legal basis for anyone to violate the privacy of my clients.

B. California Medical Confidentiality Laws

1. The Confidentiality of Medical Information Act (CMIA)

California law prohibits the school's disclosure of records that contain a student's medical information, unless the parent has first provided a detailed authorization for release of the information. CA Civil Code §56.11.

None of the listed exceptions to CA Civil Code §56.11 (i.e., emergency situation) would apply here to my clients.

See also remedies under The Information Practices Act (IPA), which limits the collection, maintenance, and distribution of personal information by state agencies. Cal. Civ. Code. §§ 1798-1798.78. See also prohibitions on the disclosure of genetic information. Cal. Civ. Code § 56.17.

Remember, each individual's privacy is important and special.

2. Cal. Health & Safety Code section 120440

Cal. Health & Safety Code section 120440 states regarding student health records:

"(e) A patient or a patient's parent or guardian may refuse to permit recordsharing... (4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both. After refusal, the patient's or client's physician may maintain access to this information for the purposes of patient care or protecting the public health."

Indeed, without parental consent, the school is not even allowed to report the child as a statistic for purposes of Immunization Assessment Reports. Note that the statute specifies that it is the patient's physician who is entrusted with the duty of protecting public health in these cases for the patient in question.

The physician must keep the patient's information confidential unless a specific and lawful order requires the information's release pursuant to one of the identified statutes. Investigator Henderson has provided no such order.

The medical privacy notice requirements of Cal. Health & Safety Code section 120440 et seq require schools to give parents notice and the opportunity to opt out of medical information sharing with the government:

Cal. Health & Safety Code section 120440

(e) A patient or a patient's parent or guardian may refuse to permit recordsharing. The health care provider administering immunization and any other agency possessing any patient or client information listed in subdivision (c), if planning to provide patient or client information to an immunization system, as described in subdivision (b), shall inform the patient or client, or the parent or guardian of the patient or client, of the following:

(1) The information listed in subdivision (c) may be shared with local health departments and the State Department of Public Health. The health care provider or other agency shall provide the name and address of the State Department of Public Health or of the immunization registry with which the provider or other agency will share the information.

(2) Any of the information shared with local health departments and the State Department of Public Health shall be treated as confidential medical information and shall be used only to share with each other, and, upon request, with health care providers, schools, child care facilities, family child care homes, WIC service providers, county welfare departments, foster care agencies, and health care plans. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or client, or parent or guardian of the patient or client, has the right to examine any immunization-related information or tuberculosis screening results shared in this manner and to correct any errors in it.

(4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both. After refusal, the patient's or client's physician may maintain access to this information for the purposes of patient care or protecting the public health. After refusal, the local health department and the State Department of Public Health may maintain access to this information for the purpose of protecting the public health pursuant to Sections 100325, 120140, and 120175, as well as Sections 2500 to 2643.20, inclusive, of Title 17 of the California Code of Regulations.

This letter will confirm that, pursuant to Cal. Health & Safety Code section 120440(e)(4), my clients do not consent to the government's illegal possession of their children's vaccination record, medical exemption record, or even contact information.

My clients chose to work specifically with Dr. Stoller to authorize him to release only the information provided on the medical exemption statement, and only to the school for admission purposes under Cal. Health & Safety Code section 120370.

C. The Subpoenas Attempt to Breach Medical Privacy

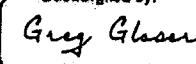
Article I, section 1 of the California constitution recognizes the importance of individuals' privacy rights, rights that clearly apply to medical records, and rights that are protected from administrative agencies as much as any other government entity. See *Bd. of Med. Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669 (1979). Given the sensitivity of a person's medical information, it is particularly important for government officials to follow the rules courts have recognized, rules designed to ensure that a person's privacy interests are respected.

If an administrative subpoena is even allowed, it "must not be too indefinite," and it must seek "relevant" information. *Brovelli v. Superior Court*, 56 Cal. 2d 524, 529 (1961). See also *Bd. of Med. Quality Assurance v. Hazel Hawkins Mem'l Hosp.*, 135 Cal. App. 3d 561, 565 (1982). The present subpoenas, however, demand confidential student information and are not narrowly tailored to any particular issue or concern, as they must be. The courts have repeatedly rejected these types of overly broad or "omnibus" demands as a violation of the privacy protections of the state constitution. See e.g., *Bearman v. Superior Court*, 117 Cal. App. 4th 463, 472 (2004); *Wood v. Superior Court*, 166 Cal. App. 3d 1138, 1148-50 (1985).

D. California Consumer Protection Law

The Subpoena does not contain the necessary proof under California law that a student's parents or guardian were provided with notice of the Subpoena and an opportunity to object on the grounds of privacy. See e.g., Cal. Code Civ. Proc. §§ 1985.3 and 1985.6. The Subpoena also does not contain a valid proof of service.

Regards,

DocuSigned by:

1863180CBC144A1
Greg Glaser, Attorney at Law

cc: Matthew C. Vance
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